

REMARKS

Filed concurrently herewith is a Request for a Three Month Extension of Time which extends the shortened statutory period for response to January 11, 2007. Accordingly, Applicants respectfully submit that this response is being timely filed.

The Official Action dated July 11, 2006 has been received and its contents carefully noted. In view thereof, Applicants provide the following comments with respect to the rejections set forth therein. As previously, claims 89-109 are presently pending in the instant application.

With reference to page 2 of the Office Action, claims 98, 99 and 100 have been rejected under 35 U.S.C. §101 because the claimed inventions are directed to non-statutory subject matter. Specifically, the Examiner is of the position that claims 98, 99 and 100 define a carrier wave or signal with descriptive material embodied on a carrier wave. This rejection is respectfully traversed in that the claimed invention as set forth in independent claims 98, 99 and 100 clearly recites statutory subject matter in compliance with the guidelines for examination of patent applications.

It is understood that the training materials for the Examiner sets forth two examples with respect to subject matter similar to that set forth by Applicants' claimed invention. The first being an assembly of transmitted signals wherein the signals carry encoded instructions to be read by a receiver, the assembly of signals arranged to be transmitted to a receiver. In their training materials it is understood that such claim is unpatentable under §101 because the signal or assembly of signals is intangible in that the statement about "to be read by a receiver" is dismissed as merely a statement of intended use.

In a second example, a claim reciting a reference signal containing an arrangement of information, said reference signal is embodied in a processor readable memory, is to be

accepted by the Examiner. That is, the training material states that such a claim is acceptable since it is similar to a claim wherein the data structure is stored in a memory.

In this regard, the Examiner's attention is directed to U.S. Patent No. 5,568,202 issued to Koo which has been the subject of discussion with respect to claims directed to subject matter similar to that set forth by Applicants' claimed invention. In the Koo patent, an electronic reference signal in a system, is recited for minimizing the effects of ghosts occurring during the transmission and reception of a television signal over a communications path, wherein said reference signal is embodied in a processor readable memory, is non-cyclic, has a substantially flat frequency response within the band width of said communications path and has a plurality of substantially uniformed amplitude peaks over a time interval, and/or a replica of the reference signal is transmitted as part of said television signal and is utilized by a decoder to derive coefficients which are used with at least one filter to remove said ghosts. This claim was found to be patentable with the inclusion of the language wherein said reference signal is embodied in a processor readable memory. Consequently, it is respectfully submitted that Applicants' claimed invention as recited in each of independent claims 98, 99 and 100 which recite a carrier wave comprising a transport stream including interactive control data with the interactive control data including an instruction to alter to the processing content at the receiving end based on comparing a recording time, place or device information which indicates when, where or with what device recording was performed with a reproduction time, place or device information which indicates when, where or with what device reproduction is performed, said recording time, place or device information being generated and recorded in a recording medium by a receiver when the receiver records the content data. That is, Applicants' claimed invention clearly recites that the carrier wave recited therein is generated and recorded in a recording

medium by a receiver when the receiver records the content data. Accordingly, it is respectfully submitted that Applicants' claimed invention as set forth in claims 98-100 each recite statutory subject matter in the sense of 35 U.S.C. §101 and is comparable to the data structure stored in a memory as is routinely accepted by the U. S. Patent and Trademark Office as statutory subject matter. Therefore, it is respectfully requested that the rejection of claims 98-1000 under 35 U.S.C. §101 be reconsidered and withdrawn by the Examiner.

With reference now to page 3 of the Office Action, claims 89-109 have been rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Publication 2002/0007493 to Butler et al. in view of U.S. Patent No. 5,982,445 issued to Eyer et al. This rejection is respectfully traversed in that the combination proposed by the Examiner neither discloses nor remotely suggests that which is presently set forth by Applicants' claimed invention.

With respect to claims 89, 90 and 91, each of these claims recite a transmission device comprising a transmitter that transmits a transport stream including content data and instructions of data for changing reproduction control based upon a comparison of recording time, place, or device information and reproduction time, place or device information, said recording time, place or device information being generated and recorded in a recording medium by a receiver when the receiver records the content data. Particularly, content data including control signals are sent from a sending side, the receiver records the time, place or device information at which the receiver records the contents including the control signals and the receiver controls the reproduction of the contents according to the control signals which varies the operation when the recording contacts including the control signals are reproduced. It is respectfully submitted that the combination proposed by the Examiner fails to disclose or remotely suggest several of the noted features.

Initially, it is noted on page 5 of the Office Action, that the Examiner relies on the teachings of Gerba, which presumably is U.S. Patent No. 5,931,908 issued to Gerba et al. However, Gerba et al. is not included in the rejection of claims 89-109 in section 2 of page 3 of the Office Action. Accordingly, the particular rejection set forth by the Examiner is unclear and consequently, should the Examiner choose to maintain the rejection of such claims, it is respectfully requested that the particular references relied on by the Examiner rejecting the claimed invention be clarified.

With reference to the teachings of Butler et al., it is noted that this reference discloses a device to control timing of overlay display at the receiver side by sending timing signals from a sending side. However, it is noted that Butler et al. clearly fails to disclose or remotely suggest that the receiver records a time, place or device at which the receiver records the contents including the control signals. Again, Butler et al. controls the display timing based only on a control signal. Therefore, the time of displaying is decided only when the control signal and the display contents are constant. Clearly, in accordance with Applicants' claimed invention, the display is varied based on the recording time, or device which is directly contrary to that set forth by Butler et al.

Similar, with respect to the teachings of Eyer et al., this reference fails to disclose or remotely suggest a device wherein the receiver records time, place or a device at which the receiver records the contents including the control signals. Further, Eyer et al. fails to disclose that the receiver controls the reproduction of contents according to the control signals which varies the operation when the recorded contents including the control signal are reproduced. In this regard, Eyer et al. merely discloses an interactive control but not a recording device as is specifically set forth by Applicants' claimed invention.

With respect to the teachings of Gerba et al., it is noted that this reference merely discloses a recording of composition data transmitted from a transmitter. However, this reference clearly fails to disclose or remotely suggest recording of the time, place or device information generated by the receiver. Accordingly, it is likewise respectfully submitted that Gerba et al. if intended to be applied by the Examiner likewise fails to disclose or remotely suggest that which is presently set forth by Applicants' claimed invention.

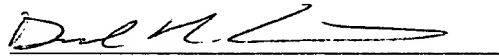
With respect to independent claims 92-97, these claims are likewise believed to be in proper condition for allowance for the reasons discussed hereinabove. That is, the combination proposed by the Examiner neither discloses nor suggests a transmission device or transmission method comprising a transmitter where a transport stream is multiplex in transmitting, the transport stream including interactive control data for realizing content data and interactive capability. The interactive control data further comprising a group of a plurality of interactive control data that are mutually associated, this group being transmitted in repetitive fashion a plurality of times, said interactive control data including an instruction to alter the processing content at the receiving end based on a comparing of recording time, place or device information which indicates when recording was performed, where recording was performed or in which device recording was performed with a reproduction time, place or device information which indicates when, where or with what device reproduction is performed, with said recording time, place or device information being generated and recorded in a recording medium by a receiver when the receiver records the content data. Consequently, it is respectfully submitted that these claims are likewise in proper condition for allowance.

With respect to claims 101-109, each of these claims are directly dependent upon one of independent claims 89, 90 or 91 and are likewise believed to be in proper condition for allowance for the reasons discussed hereinabove in detail.

Therefore, in view of the foregoing it is respectfully requested that the rejections of record be reconsidered and withdrawn by the Examiner, that claims 89-109 be allowed and that the application be passed to issue.

Should the Examiner believe a conference would be of benefit in expediting the prosecution of the instant application, he is hereby invited to telephone counsel to arrange such a conference.

Respectfully submitted,


Donald R. Studebaker
Reg. No. 32,815

Nixon Peabody LLP
401 9th Street N.W.
Suite 900
Washington, D. C. 20004
(202) 585-8000